

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT JAHODA,

Plaintiff,

v.

PRETTYLITTLETHING.COM USA, INC., and
PRETTYLITTLETHING.COM LTD,

Defendants.

Civil Action No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Robert Jahoda, by and through undersigned counsel, seeks a permanent injunction requiring a change in PrettyLittleThing.com USA, Inc. and PrettyLittleThing.com LTD's ("Defendant" or "PTL") corporate policies to cause its online stores to become, and remain, accessible to individuals with visual disabilities. In support thereof, Plaintiff respectfully asserts as follows:

INTRODUCTION

1. In a September 25, 2018 letter to U.S. House of Representative Ted Budd, U.S. Department of Justice Assistant Attorney General Stephen E. Boyd confirmed that public accommodations must make the websites they own, operate, or control equally accessible to individuals with disabilities. Assistant Attorney General Boyd's letter provides:

The Department [of Justice] first articulated its interpretation that the ADA applies to public accommodations' websites over 20 years ago. This interpretation is consistent with the ADA's title III requirement that the goods, services, privileges, or activities provided by places of public accommodation be equally accessible to people with disabilities.

See Letter from Assistant Attorney General Stephen E. Boyd, U.S. Department of Justice, to Congressman Ted Budd, U.S. House of Representatives (Sept. 25, 2018) (available at <https://www.adatitleiii.com/wp-content/uploads/sites/121/2018/10/DOJ-letter-to-congress.pdf>) (last accessed August 16, 2019).

2. More recently, the United States Court of Appeals for the Ninth Circuit confirmed the ADA applies to websites and mobile applications, equally. See *Robles v. Domino's Pizza, LLC*, 913 F.3d 898 (9th Cir. 2019).

3. Robert Jahoda suffers retinitis pigmentosa, a genetic disorder that rendered him legally blind when he was just two years old. Today, he uses screen reader technology, including VoiceOver and JAWS, to navigate the Internet.

4. Screen reader “software translates the visual internet into an auditory equivalent. At a rapid pace, the software reads the content of a webpage to the user.” *Andrews v. Blick Art Materials, LLC*, 286 F.Supp.3d 365, 374 (E.D.N.Y. 2017) (J. Weinstein).

The screen reading software uses auditory cues to allow a visually impaired user to effectively use websites. For example, when using the visual internet, a seeing user learns that a link may be “clicked,” which will bring her to another webpage, through visual cues, such as a change in the color of the text (often text is turned from black to blue). When the sighted user's cursor hovers over the link, it changes from an arrow symbol to a hand.

The screen reading software uses auditory—rather than visual—cues to relay this same information. When a sight impaired individual reaches a link that may be “clicked on,” the software reads the link to the user, and after reading the text of the link says the word “clickable.”...Through a series of auditory cues read aloud by the screen reader, the visually impaired user can navigate a website by listening and responding with her keyboard.

Id. See American Federation for the Blind, *Screen Readers*, available at <https://www.afb.org/blindness-and-low-vision/using-technology/assistive-technology-products/screen-readers> (last accessed August 16, 2019) (discussing screen readers and how they work).

5. Defendants are retailers that sell clothing and accessories.

6. Consumers in the United States may research and purchase Defendants' products and access other brand-related content and services at www.prettylittlething.us and with the mobile applications Defendants make available for iOS and Android-based mobile devices (collectively, "Website and Apps"), which Website and Apps Defendants own, operate, and/or control.

7. Upon information and belief, Defendants are responsible for the policies, practices, and procedures concerning the Websites and Apps' development and maintenance.

8. Unfortunately, Defendants deny approximately 8.1 million Americans who have difficulty seeing access to its Website and Apps' goods, content, and services because the Website and Apps are largely incompatible with the screen reader programs these Americans use to navigate an increasingly ecommerce world. *See* Press Release, United States Census Bureau, Nearly 1 in 5 People Have a Disability in the U.S., Census Bureau Reports *Report Released to Coincide with 22nd Anniversary of the ADA* (Jul. 25, 2012), *available at* <https://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html> (last accessed Aug. 16, 2019) ("About 8.1 million people had difficulty seeing, including 2.0 million who were blind or unable to see.").

9. Plaintiff brings this civil rights action against Defendants to enforce Title III of the Americans with Disabilities Act, [42 U.S.C. § 12101](#) *et seq.* ("Title III"), which requires, among other things, that a public accommodation (1) not deny persons with disabilities the benefits of its services, facilities, privileges and advantages; (2) provide such persons with benefits that are equal to those provided to nondisabled persons; (3) provide auxiliary aids and services—including electronic services for use with a computer screen reading program—where necessary to ensure effective communication with individuals with a visual disability, and to ensure that such persons

are not excluded, denied services, segregated or otherwise treated differently than sighted individuals; and (4) utilize administrative methods, practices, and policies that provide persons with disabilities equal access to online content.

10. By failing to make its Website and Apps available in a manner compatible with computer screen reader programs, Defendants, public accommodations subject to Title III, deprive blind and visually-impaired individuals the benefits of its online goods, content, and services—all benefits it affords nondisabled individuals—thereby increasing the sense of isolation and stigma among these Americans that Title III was meant to redress.

11. Because Defendants' Website and Apps are not and have never been accessible, and because upon information and belief Defendants do not have, and have never had, an adequate corporate policy that is reasonably calculated to cause its Websites and Apps to become and remain accessible, Plaintiff invokes [42 U.S.C. § 12188\(a\)\(2\)](#) and seeks a permanent injunction requiring that:

Compl. ¶	Relief Requested	Defendant's Deadline to notify Plaintiff's counsel of completion
11(a)	Defendant retain a qualified consultant acceptable to Plaintiff ("Approved Accessibility Consultant") who shall assist it in improving the accessibility of its Website, including all third party content and plug-ins, so the goods and services on the Website may be equally accessed and enjoyed by individuals with vision related disabilities.	30-days of Court's Order
11(b)	Defendant work with the Approved Accessibility Consultant to ensure that all employees involved in website development be given accessibility training on a biennial basis, including onsite training to create accessible content at the design and development stages.	180-days of Court's Order and every 180-days thereafter until the Court orders otherwise
11(c)	Defendant work with the Approved Accessibility Consultant to perform an automated accessibility audit on	90-days of Court's Order and every 90-

	at least a quarterly basis to evaluate whether Defendant's Website may be equally accessed and enjoyed by individuals with vision related disabilities on an ongoing basis.	days thereafter until the Court orders otherwise
11(d)	Defendant work with the Approved Accessibility Consultant to perform end-user accessibility/usability testing on at least a quarterly basis with said testing to be performed by humans who are blind or have low vision, or who have training and experience in the manner in which persons who are blind use a screen reader to navigate, browse, and conduct business on websites, in addition to the testing, if applicable, that is performed using semi-automated tools.	90-days of the Court's Order and every 90-days thereafter until the Court orders otherwise
11(e)	Defendant incorporate all of the Approved Accessibility Consultant's recommendations within sixty (60) days of receiving the recommendations.	60-days of receiving recommendations until the Court orders otherwise
11(f)	Defendant work with the Approved Accessibility Consultant to create an Accessibility Policy that will be posted on its Website, along with an e-mail address, instant messenger, and toll free phone number to report accessibility-related problems.	60-days of the Court's Order
11(g)	Defendant directly link from the footer on each page of the Website a statement that indicates that Defendant is making efforts to maintain and increase the accessibility of its Website to ensure that persons with disabilities have full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of the Defendant through the Website.	60-days of the Court's Order
11(h)	Defendant accompany the public policy statement with an accessible means of submitting accessibility questions and problems, including an accessible form to submit feedback or an email address to contact representatives knowledgeable about the Accessibility Policy.	60-days of the Court's Order
11(i)	Defendant provide a notice, prominently and directly linked from the footer on each page of the Website, soliciting feedback from visitors to the Website on how the accessibility of the Website can be improved. The link shall provide a method to provide feedback, including an accessible form to submit feedback or an email address	60-days of the Court's Order

	to contact representatives knowledgeable about the Accessibility Policy.	
11(j)	Defendant provide a copy of the Accessibility Policy to all web content personnel, contractors responsible for web content, and Client Service Operations call center agents (“CSO Personnel”) for the Website.	60-days of the Court’s Order
11(k)	Defendant train no fewer than three of its CSO Personnel to automatically escalate calls from users with disabilities who encounter difficulties using the Website. Defendant shall have trained no fewer than three of its CSO personnel to timely assist such users with disabilities within CSO published hours of operation. Defendant shall establish procedures for promptly directing requests for assistance to such personnel including notifying the public that customer assistance is available to users with disabilities and describing the process to obtain that assistance.	180-days of Court’s Order
11(l)	Defendant modify existing bug fix policies, practices, and procedures to include the elimination of bugs that cause the Website to be inaccessible to users of screen reader technology	180-days of Court’s Order
11(m)	Plaintiff, his counsel, and its experts monitor the Website for up to two (2) years after the Approved Accessibility Consultant validates the Website is free of accessibility errors/violations to ensure Defendant has adopted and implemented adequate accessibility policies. To this end, Plaintiff, through his counsel and its experts, shall be entitled to consult with the Approved Accessibility Consultant at their discretion, and to review any written material, including but not limited to any recommendations the Approved Accessibility Consultant provides Defendant.	Until the Court orders otherwise

12. Web-based technologies have features and content that are modified on a daily, and in some instances an hourly, basis, and a one time “fix” to an inaccessible website will not cause the website to remain accessible without a corresponding change in corporate policies related to those web-based technologies. Jonathan Lazur et al., *Ensuring Digital Accessibility Through Process and Policy* 140 (2015). As one leading commentator notes,

The most significant problem is maintaining the accessibility of a large commercial site. Without policies, procedures and metrics—such as testing a release for accessibility before posting to the website and training in accessible design (so that accessibility is part of the design process the way, say, cybersecurity is)—the site’s status as accessible will be temporary at best.

Fighting for Accessible Websites under the ADA: Daniel Goldstein, Brown Goldstein Levy, Baltimore, Bloomberg BNA, Jan. 13, 2016, ISSN 1098-5190 (reproduced with permission from Electronic Commerce & Law Report, 21 ECLR, 2, 1/13/16 (available at <https://www.browngold.com/wbcntntprdl/wp-content/uploads/BNA-Fighting-for-Accessible-Websites-Under-ADA.pdf>) (last accessed Aug. 16, 2019)

13. To evaluate whether an inaccessible website has been rendered accessible, and whether corporate policies related to web-based technologies have been changed in a meaningful manner that will cause the website to remain accessible, the website must be reviewed on a periodic basis using both automated accessibility screening tools and end user testing by disabled individuals.

[I]f you have planned to redesign or add a certain segment to your site, then make it accessible from the start. It’s far cheaper to plan for an elevator than to decide to add one once your 30-story building is complete. Or if you are re-branding, consider using templates that will ensure accessibility. Make sure you have policies, procedures and metrics in place so that you know if you are maintaining accessibility and can identify why, if you are not. Most of all, consult disabled consumers or a consumer organization before deciding what you are going to do, and have consumers actually test the changes.

Something you imagine you may need to do, you may not need to do at all or may be able to do much cheaper. Something you hadn’t thought to do may be critical to accessibility. And, of course, if you work with the disability community, they will spread the word that this is no longer a site to be avoided, but to be used.

Id. at 3.

JURISDICTION AND VENUE

14. The claims alleged arise under Title III such that this Court's jurisdiction is invoked pursuant to [28 U.S.C. § 1331](#) and [42 U.S.C. § 12188](#).

15. Defendants attempt to, and indeed do so, participate in the Commonwealth's economic life by clearly performing business over the Internet. Through its Website and Apps, Defendants enter into contracts for the sale of its products with residents of Pennsylvania. These electronic sales contracts involve, and indeed require, Defendants' knowing and repeated transmission of computer files over the Internet. *See Gniewkowski v. Lettuce Entertain You*, Order, ECF No. 123 (W.D. Pa Apr. 25, 2017) *clarified by* Order of Court, ECF No. 169 (W.D. Pa. June 22, 2017) (Judge Schwab) (exercising personal jurisdiction over forum plaintiff's website accessibility claims against out-of-forum website operator); *see also Access Now Inc. v. Otter Products, LLC*, 280 F.Supp.3d 287 (D. Mass. Dec. 4, 2017) (same); *Access Now, Inc. v. Sportswear, Inc.*, 298 F.Supp.3d 296 (D. Mass. 2018) (same).

16. As described in additional detail below, Plaintiff was injured when he attempted to access Defendants' Website and Apps from his home but encountered barriers that denied his full and equal access to Defendants' online goods, content, and services.

17. Venue in this District is proper under [28 U.S.C. § 1391\(b\)\(2\)](#) because this is the judicial district in which a substantial part of the acts and omissions giving rise to Plaintiff's claims occurred.

PARTIES

18. Plaintiff is and, at all times relevant hereto, has been a resident of this District. Plaintiff is and, at all times relevant hereto, has been legally blind and is therefore a member of a

protected class under the ADA, 42 U.S.C. § 12102(2) and the regulations implementing the ADA set forth at 28 CFR §§ 36.101 *et seq.*

19. Defendant Prettylittlething.com USA, Inc. is a Delaware corporation.

20. Defendant Prettylittlething.com Ltd is registered in England and Wales. Its registered office is located at 49-51 Dale Street Manchester England M1 2HF.

FACTS APPLICABLE TO ALL CLAIMS

21. While the increasing pervasiveness of digital information presents an unprecedented opportunity to increase access to goods, content, and services for people with perceptual or motor disabilities, website and mobile application developers often implement digital technologies without regard to whether those technologies can be accessed by individuals with disabilities. This is notwithstanding the fact that accessible technology is both readily available and cost effective.

DEFENDANTS' ONLINE CONTENT

22. Defendants' Website and Apps allow consumers to research and purchase Defendants' products from the comfort and convenience of their own homes, and arrange for home delivery into this District.

23. Defendants are responsible for the policies, practices, and procedures concerning the Website and Apps' development and maintenance.

HARM TO PLAINTIFF

24. Plaintiff attempted to access the Website and Apps from his home in this District. Unfortunately, because of Defendants' failure to build its Website and Apps in a manner that is compatible with screen reader programs, Plaintiff is unable to understand, and thus is denied the benefit of, much of the content and services he wishes to access on the Website and Apps.

25. Plaintiff attempted to access the Website and Apps using VoiceOver with iOS.

26. VoiceOver is a gesture-based screen reader that lets you enjoy using iPhone even if you don't see the screen. With VoiceOver enabled, just triple-click the Home button to access it wherever you are in iOS. Hear a description of everything happening on your screen, from battery level to who's calling to which app your finger is on. You can also adjust the speaking rate and pitch to suit you...You can control VoiceOver using a simple set of gestures. Touch or drag your finger around the screen and VoiceOver tells you what's there. Tap a button to hear a description, then double-tap to select. Or flick left and right to move from one element to the next.

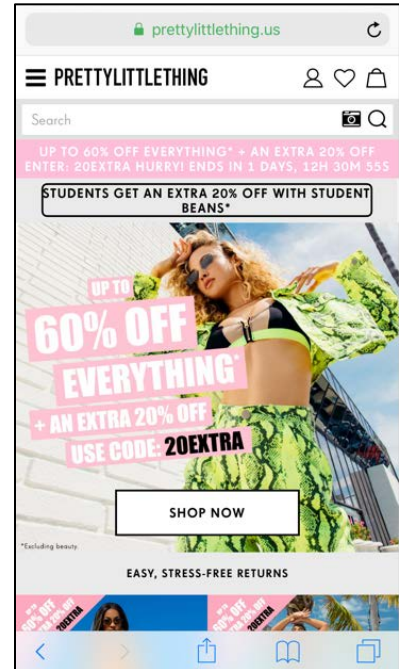


VoiceOver on iPhone

When you interact with an element, a black rectangle appears around it so sighted users can follow along. When you prefer privacy, you can activate a screen curtain to turn off the display completely, but still hear all that VoiceOver has to say.” See Apple, *Accessibility*, available at <https://www.apple.com/accessibility/iphone/vision/> (last accessed Aug. 16, 2019).

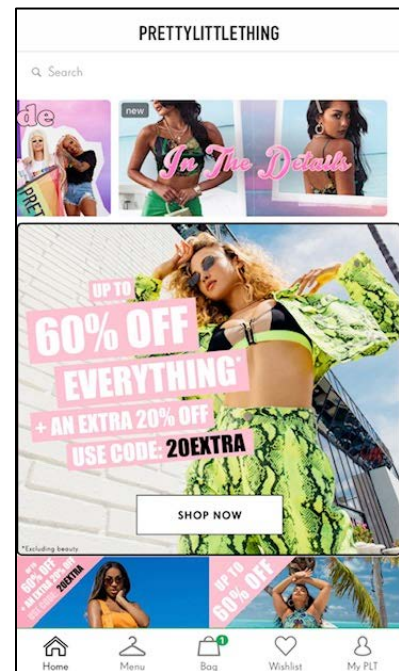
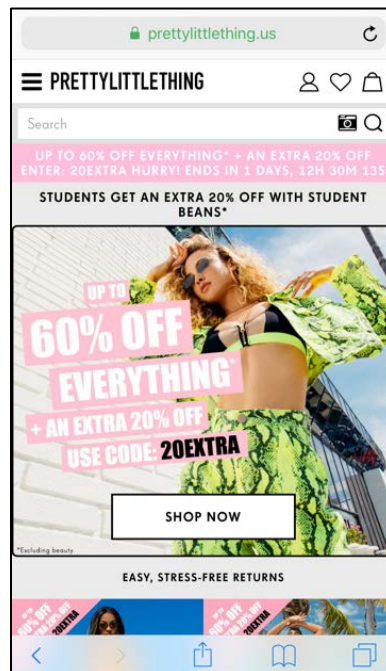
27. Unfortunately, as a result of visiting Defendants’ Website and Apps from this District, and from investigations performed on his behalf, Plaintiff found Defendants’ Website and Apps to be largely unusable due to various barriers that deny him full and equal access to Defendants’ online content and services. For example:

a. The Website and Apps prevent screen reader users who navigate sequentially through content from accessing primary content directly. For example, upon visiting Defendants' website at www.prettylittlething.us, shoppers who perceive content visually will note a rotating slideshow of text. As demonstrated in the screenshot to the right, the slide displayed reads, "STUDENTS GET AN EXTRA 20% OFF WITH STUDENT BEANS*." Shoppers who are interested may click this slide directly; those who are not can scroll down the page without issue. Unfortunately, because Defendants' accessibility



policies fail to ensure the website is compatible with screen reader auxiliary aids, Plaintiff cannot tab beyond this slideshow. Instead, screen readers remain locked on the text in it, blocking Plaintiff and other screen reader users from tabbing to any subsequent content.

b. The Website and Apps do not provide sufficient text equivalents for important non-text elements. Providing text alternatives allows information to be rendered in a variety of ways by a variety of shoppers. A person who cannot see a picture, logo, or



icon can have a text alternative read aloud using synthesized speech. For example, the Website and Apps use image files to convey important promotional information. Unfortunately, Defendants' corporate accessibility policies, if any, fail to ensure these images include alternative text to describe its promotions in sufficient detail so that a screen reader user, like Plaintiff, can determine what these images represent. To this end, Defendants' Website and Apps include an image with text that reads, "UP TO 60% OFF EVERYTHING* + AN EXTRA 20% OFF USE CODE: 20 EXTRA." The image also includes a button with text that reads, "SHOP NOW," prompting users who can see to click the image for more information. The image also contains important fine print, providing that Defendants' sale does not apply to beauty products. Unfortunately, Defendants do not accompany this image with sufficiently descriptive alternative text. As a result, when screen reader users focus on website's image, they hear, "view all clothing html link," only. Similarly, when shoppers focus on the image in Defendants' Apps, screen reader users hear "banner underscore two two one three seven three." This alternative text is insufficient because it does not provide any information about Defendants' sales, the access code, exclusions, and because it does not invite users to click the image to browse eligible products.

c. The Website and Apps provide a Size Guide that shoppers may review to determine what size apparel to purchase. Size guides are particularly important to consumers who shop online because they lack the opportunity to try on apparel, like the clothing that

UP TO 60% OFF EVERYTHING* - AN EXTRA 20% OFF ENTER: 20EXTRA HURRY! ENDS IN 1 DAYS, 12H 31M 50S

Clothing Size

US Size	Bust Inches	Waist Inches	Hips Inches
0	31	23.75	34
2	33	24.5	35
4	34	26.5	37
6	36	28.5	39
8	38	30.5	41
10	40	32.5	43
12	42	34.5	45
14	44	36.5	47
16	46	38.5	49

International Conversions

Size	UK	EUROPE	USA/CAN	AUS/NZL
XS	4	32	0	4
S	6	34	2	6
M	8	36	4	8
L	10	38	6	10
XL	12	40	8	12
XXL	14	42	10	14

Size Guide

INTERNATIONAL CONVERSIONS

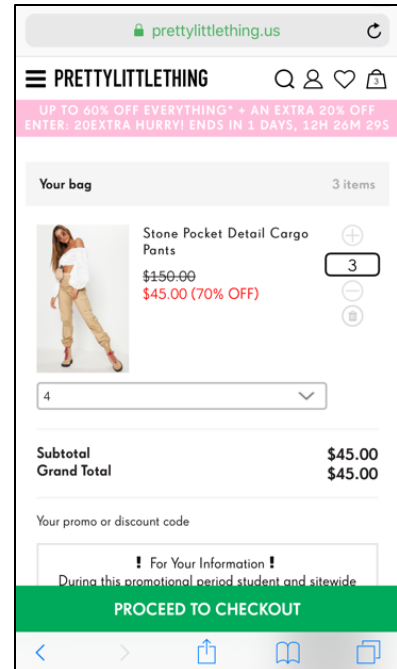
Size	UK	EUROPE	USA/CAN	AUS/NZL
XS	4	32	0	4
S	6	34	2	6
M	8	36	4	8
L	10	38	6	10
XL	12	40	8	12
XXL	14	42	10	14

CLOTHING

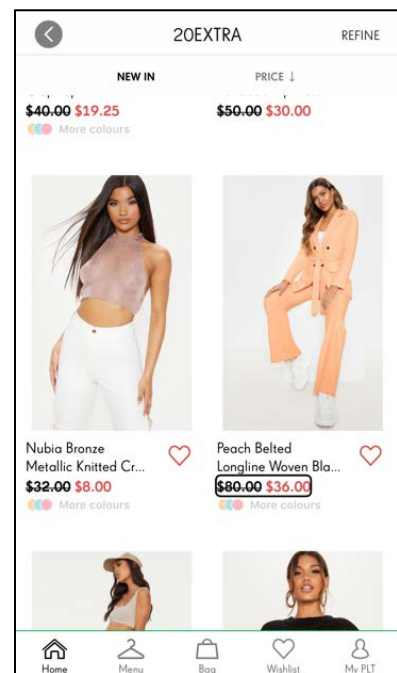
US Size	Bust		Waist		Hips	
	CM	Inches	CM	Inches	CM	Inches
0	78.5	31	60.5	23.75	86.5	34
2	81	32	63	24.5	89	35
4	84	33	66	25.5	91.5	36
6	87	34	69	26.5	94	37
8	90	35	72	27.5	96.5	38
10	93	36	75	28.5	99	39
12	96	37	78	29.5	101.5	40
14	99	38	81	30.5	104	41
16	102	39	84	31.5	106.5	42

Defendants sell, before purchasing. Unfortunately, Defendants' Websites and Apps do not provide alternative text to describe this sizing information to Plaintiff and other screen reader users sufficiently. Instead, screen readers read each character without context, putting the burden on Plaintiff to map which numbers associate with each size and international market. This frustrating exercise makes it likely Plaintiff will close the size guide without acquiring the sizing information he seeks, thereby making it impossible for him to confidently purchase apparel that will fit from Defendants' online stores.

d. Shoppers who perceive content visually will recognize the “decrease quantity” and “increase quantity” buttons on the www.prettylittlething.us website and understand from their visual context that by clicking them, Defendants will decrease and increase the size of their order accordingly. Unfortunately, Plaintiff cannot access, or click, these buttons with his screen reader, thereby blocking him from using this important shopping tool independently, which Defendants otherwise make available to shoppers who do not rely on screen reader technology to shop in its online stores.

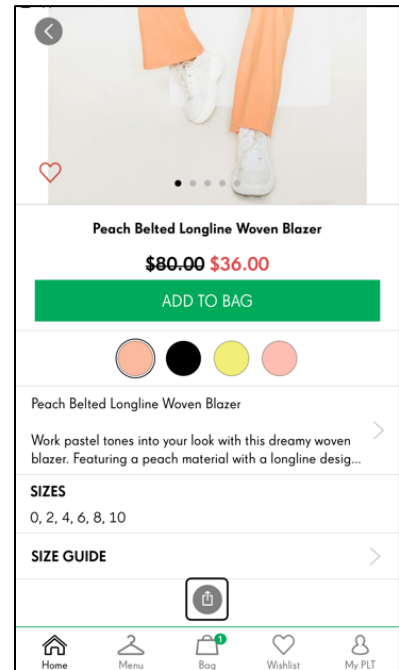


e. The Website and Apps uses visual cues to convey content and other information to sighted users. Unfortunately, screen readers cannot interpret these cues and communicate the information they represent to individuals with visual disabilities. For example, shoppers who perceive content visually will notice that many products available for purchase on Defendants' Apps include two prices. One price—a higher price—appears in strikethrough font. The other—a lower price—does not. These shoppers will likely infer the price in strikethrough font is the “old” or “original” price, while the price in regular font is the “new” or “sale” price. Unfortunately, Plaintiff's screen reader cannot identify the meanings of these two fonts so that he can make an informed decision. Instead, Plaintiff hears



two prices for the same product, and cannot determine what they signify. This confusion prevents Plaintiff from making informed purchasing decisions.

f. Links and buttons on the Website and Apps do not describe their purpose. As a result, blind users cannot determine whether they want to follow a particular link, making navigation an exercise of trial and error. For example, shoppers who perceive content visually will likely recognize the Share icon displayed throughout the Apps and understand that by clicking it, Defendants will prompt them to share a particular product page via text, email, or social media. Unfortunately, this icon is not labeled with sufficient alternative text. As a result, when Plaintiff hovers over it, his screen reader reads, “button,” only. This audio



output is meaningless, making it impossible for Plaintiff and other screen reader users to utilize this feature independently.

28. These barriers, and others, deny Plaintiff full and equal access to all of the services the Website and Apps offer, and now deter him from attempting to use the Website and Apps. Still, Plaintiff would like to, and intends to, attempt to access the Website and Apps in the future to research the products and services the Website and Apps offer, or to test the Website and Apps for compliance with the ADA.

29. If the Website and Apps were accessible, *i.e.* if Defendants made the Website and Apps compatible with screen reader software, Plaintiff could independently research and purchase Defendants' products and access its other online content and services.

30. Though Defendants may have centralized policies regarding the maintenance and operation of its Website and Apps, Defendants have never had a plan or policy that is reasonably calculated to make its Website and Apps fully accessible to, and independently usable by, individuals with vision related disabilities. As a result, the complained of access barriers are permanent in nature and likely to persist.

31. The law requires that Defendants reasonably accommodate Plaintiff's disabilities by removing these existing access barriers. Removal of the barriers identified above is readily achievable and may be carried out without much difficulty or expense.

32. Plaintiff has been, and in the absence of an injunction will continue to be, injured by Defendants' failure to provide its online content and services in a manner that is compatible with screen reader technology.

DEFENDANTS' KNOWLEDGE OF ONLINE ACCESSIBILITY REQUIREMENTS

33. Defendants have long known that screen reader technology is necessary for individuals with visual disabilities to access its online content and services, and that it is legally responsible for providing the same in a manner that is compatible with these auxiliary aids.

34. Indeed, the "Department [of Justice] first articulated its interpretation that the ADA applies to public accommodations' websites over 20 years ago." As described above, on September 25, 2018, Assistant Attorney General Stephen E. Boyd confirmed nothing about the ADA, nor the Department's enforcement of it, has changed this interpretation.

35. More recently, the United States Court of Appeals for the Ninth Circuit confirmed the ADA applies to websites and mobile applications, equally. See *Robles v. Domino's Pizza, LLC*, 913 F.3d 898 (9th Cir. 2019).

THE PARTIES HAVE NO ADMINISTRATIVE REMEDIES TO PURSUE

36. There is no DOJ administrative proceeding that could provide Plaintiff with Title III injunctive relief.

37. While DOJ has rulemaking authority and can bring enforcement actions in court, Congress has not authorized it to provide an adjudicative administrative process to provide Plaintiff with relief.

38. Plaintiff alleges violations of existing and longstanding statutory and regulatory requirements to provide auxiliary aids or services necessary to ensure effective communication, and courts routinely decide these types of effective communication matters.

39. Resolution of Plaintiff's claims does not require the Court to unravel intricate, technical facts, but rather involves consideration of facts within the conventional competence of the courts, *e.g.* (a) whether Defendant offers content and services on its Website and Apps, and (b) whether Plaintiff can access the content and services.

SUBSTANTIVE VIOLATION

Title III of the ADA, 42 U.S.C. § 12181 *et seq.*

40. The assertions contained in the previous paragraphs are incorporated by reference.

41. Defendants' Website and Apps are places of public accommodation within the definition of Title III of the ADA, 42 U.S.C. § 12181(7). *See Suchenko v. ECCO USA, Inc.*, 2018 WL 3933514, *3 (W.D. Pa. Aug. 16, 2018) ("Simply put, Defendant in the instant case, like other corporate defendants in *Gniewkowski* and *Suchenko*, purportedly owns, operates, and/or controls the property upon which the alleged discrimination has taken place—i.e., its website. Therefore, Plaintiff in this case has a nexus to the place of public accommodation and thus may claim the protections of Title III."); *see also Robles v. Domino's Pizza, LLC*, 913 F.3d 898 (9th Cir. 2019).

42. In the broadest terms, the ADA prohibits discrimination on the basis of a disability in the full and equal enjoyment of goods and services of any place of public accommodation. 42 U.S.C. § 12182(a). Thus, to the extent Defendants do not provide Plaintiff with full and equal access to its Website and Apps, it has violated the ADA.

43. In more specific terms, Title III of the ADA imposes statutory and regulatory requirements to ensure persons with disabilities are not excluded, denied services, segregated or otherwise treated differently than other individuals as a result of the absence of auxiliary aids and services. 42 U.S.C. § 12182(b)(2)(A); 28 C.F.R. §§ 36.303(a), (c). Under these provisions, public accommodations must furnish appropriate auxiliary aids and services that comply with their effective communication obligations. *Id.*

44. Auxiliary aids and services are necessary when their absence effectively excludes an individual from participating in or benefiting from a service, or fails to provide a like experience to the disabled person.

45. Auxiliary aids and services include, but are not limited to, audio recordings, screen reader software, magnification software, optical readers, secondary auditory programs, large print materials, accessible electronic and information technology, other effective methods of making visually delivered materials available to individuals who are blind or have low vision, and other similar services and actions. 28 C.F.R. §§ 36.303(b)(2), (4).

46. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. 28 C.F.R. §§ 36.303(c)(1)(ii). To this end, the Ninth Circuit has explained, “assistive technology is not frozen in time: as technology advances, []

accommodations should advance as well.” *Enyart v. Nat’l Conference of Bar Examiners, Inc.*, 630 F.3d 1153, 1163 (9th Cir. 2011).

47. By failing to provide its Website and Apps’ content and services in a manner that is compatible with auxiliary aids, Defendants have engaged, directly, or through contractual, licensing, or other arrangements, in illegal disability discrimination, as defined by Title III, including without limitation:

- (a) denying individuals with visual disabilities opportunities to participate in and benefit from the goods, content, and services available on its Website and Apps;

- (b) affording individuals with visual disabilities access to its Website and Apps that is not equal to, or effective as, that afforded others;

- (c) utilizing methods of administration that (i) have the effect of discriminating on the basis of disability; or (ii) perpetuate the discrimination of others who are subject to common administrative control;

- (d) denying individuals with visual disabilities effective communication, thereby excluding or otherwise treating them differently than others; and/or

- (e) failing to make reasonable modifications in policies, practices, or procedures where necessary to afford its services, privileges, advantages, or accommodations to individuals with visual disabilities.

48. Defendants have violated Title III by, without limitation, failing to make its Website and Apps’ services accessible by screen reader programs, thereby denying individuals with visual disabilities the benefits of the Website and Apps, providing them with benefits that are not equal to those it provides others, and denying them effective communication.

49. Defendants have further violated Title III by, without limitation, utilizing administrative methods, practices, and policies that allow its Website and Apps to be made available without consideration of consumers who can only access the company's online goods, content, and services with screen reader programs.

50. Making its online goods, content, and services compatible with screen readers does not change the content of Defendants' Website and Apps nor result in making the Website and Apps different, but enables individuals with visual disabilities to access the Website and Apps Defendants already provides.

51. Defendants' ongoing violations of Title III have caused, and in the absence of an injunction will continue to cause, harm to Plaintiff and other individuals with visual disabilities.

52. Plaintiff's claims are warranted by existing law or by non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law.

53. Pursuant to [42 U.S.C. § 12188](#) and the remedies, procedures and rights set forth and incorporated therein, Plaintiff requests relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for:

(A) A Declaratory Judgment that at the commencement of this action Defendants were in violation of the specific requirements of Title III of the ADA described above, and the relevant implementing regulations of the ADA, in that Defendants took no action that was reasonably calculated to ensure that its Website and Apps are fully accessible to, and independently usable by, individuals with visual disabilities;

(B) A permanent injunction pursuant to [42 U.S.C. § 12188\(a\)\(2\)](#) and [28 CFR § 36.504\(a\)](#) which directs Defendants to take all steps necessary to bring its Website and Apps into

full compliance with the requirements set forth in the ADA, and its implementing regulations, so that its Website and Apps are fully accessible to, and independently usable by, blind individuals, and which further directs that the Court shall retain jurisdiction for a period to be determined to ensure that Defendants have adopted and is following an institutional policy that will in fact cause it to remain fully in compliance with the law—the specific injunctive relief requested by Plaintiff is described more fully in paragraph 11 above.

- (C) Payment of actual, statutory, and other damages, as the Court deems proper;
- (D) Payment of costs of suit;
- (E) Payment of reasonable attorneys' fees, pursuant to [42 U.S.C. § 12205](#) and [28 CFR § 36.505](#), including costs of monitoring Defendant's compliance with the judgment (*see Gniewkowski v. Lettuce Entertain You Enterprises, Inc.*, Case No. 2:16-cv-01898-AJS (W.D. Pa. Jan. 11, 2018) (ECF 191); *see also Access Now, Inc. v. Lax World, LLC*, No. 1:17-cv-10976-DJC (D. Mass. Apr. 17, 2018) (ECF 11);
- (F) Whatever other relief the Court deems just, equitable and appropriate; and
- (G) An Order retaining jurisdiction over this case until Defendant has complied with the Court's Orders.

Dated: August 16, 2019

Respectfully Submitted,

/s/ R. Bruce Carlson

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